IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 784 of 1977

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE S.K.KESHOTE
and
Hon'ble MR.JUSTICE D.C.SRIVASTAVA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

JADAV PRABHATBHAI JETHABHAI

Versus

PARMAR KARSANBHAI DHULABHAI

Appearance:
MR SH SANJANWALA for the appellants
MR KC SHAH for Respondents.

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE S.K.KESHOTE
and
MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 28/07/2000

ORAL JUDGEMENT (Per J.N.Bhatt, J.)

Whether the alienation of immovable property by the de-facto guardian of a minor is, always, void, and whether it is obligatory for the minor to get it quashed by legal process and, whether the minor is also obliged to resort to such legal process within the period of three years upon attaining the majority, are the questions forming the theme and heart of this Full Bench Reference.

2. During the course of the arguments of this Appeal, initially, before the learned Single Judge, he thought it expedient, to refer the 'Entire Appeal' to the Larger Bench for deciding the controversy raised between the parties in view of two contradictory decisions enumerated in the reference order dated 26th August 1993. That is how the First Appeal has come up before this Larger Bench. Ordinarily, the question of law or formulated points under reference are placed before the Larger Bench. However, since the time gap long and the also fact that the learned brother Judge, who has made reference, has, already, retired we thought it expedient to deal with the controversy pleaded in the Reference.

3. Let us, now, at this stage, examine the material spectrum and dimension of fact-situation. The Appellants are the original plaintiffs who instituted Regular Civil Suit No.23 of 1976, for the relief of possession, mesne profit, etc. on the premise that the agricultural property bearing Revenue Survey No.167/2 admeasuring 1 Acre - 9 Gunthas came to be alienated by the de-facto guardian cousin Bhikha Lallu by virtue of sale Deed, dated 7.5.1953, is a void transaction as it is without any authority. In the alternative the original plaintiffs sought reliefs of possession on the ground that the Suit land was redeemed from the transferee by paying the amount of Rs.700/- in 1961, and since the date 4.6.1966, the suit land, was possessed by all of them. It was also pleaded that thereafter the plaintiffs entered into a mortgage transaction with one Gordhan Lallu of village Ganpatpura for the consideration of Rs.1200/-. In short, the alternative contention has been that the possession of the suit land remained with plaintiffs and, therefore, they are entitled to possession as suit is filed within a period of 12 years.

4. The respondents - original defendants by filing the composite written statement, at Ex.8, controverted

the averments made in the plaint that they contended that the de-facto guardian, their father was entrusted the management inter-alia contending that they have full and complete ownership in respect of the land by virtue of Sale Deed dated 7.5.1953 and since then they have been in possession and actual enjoyment of the Suit land having separate agricultural Khata No.188 in the revenue record. They also filed further written statement at Ex.35 subsequent to the amended plaint. It is, therefore, the contention of the respondents that they are the full and complete owners in respect of the suit land and the suit is not maintainable as it is barred by limitation. It is specifically denied that there was transaction of mortgage and not the sale and out-right sale. It has been their contentions that since beginning after the purchase initially their father and thereafter they all brothers are owners and occupants of the suit land. It was also pleaded that the plaintiffs even after attaining the age of majority did not file Suit for possession within a period of three years.

5. In view of the pleadings of the parties and rival contentions the trial Court raised issues, at Ex.9, and pursuant to the amendment in the plaint and subsequent further written statement issues, also, were modified and additional issues were raised.

6. After considering the evidence of both the parties, documentary as well as testimonial, the trial Court non-suited the plaintiffs' holding -

(i) that the plaintiffs have failed to prove that they are the owners of the suit land;

(ii) that the plaintiffs have also failed to show and prove that their father had mortgaged with the possession of the Suit land with the father of the defendant in 1953 and that it was redeemed in 1961.

(iii) that the plaintiffs have totally failed to show that the suit land was again mortgaged by the plaintiff to one Gordhanbhai Lallubhai in the year 1966 and again it was redeemed by them within a period of one year;

(iv) that the Suit is barred by limitation;

(v) that the plaintiffs have failed to prove that the transaction which took place, on 7.5.1953, executed by Bhikhabhai Lallubhai is without

authority and not binding to the plaintiffs, as it was executed without permission of the District Court.

7. In short the trial Court dismissed the Suit for possession, mesne profit and the Suit came to be dismissed.

8. Being aggrieved by the Judgment and Decree in Special Civil Suit No.23 of 1976 recorded by the learned Civil Judge (S.D.), Vadodara dated, 17.3.1977, the appellant has, by filing this Appeal, invoked the aids of provision of Section 96 of the Code of Civil Procedure.

9. Learned Counsel Mr.Sanjanwala, in course of his submission, before us, has criticised the approach of the trial Court and has contended that it has, seriously, erred in not accepting the evidence and the plea of the original plaintiff which has been countered by learned Counsel Mr.Shah for the respondent - original defendants.

10. After having given our anxious thoughts and serious consideration to the submissions raised before us we are of the clear opinion that the impugned Judgment and Decree recorded by the trial Court could not be said to be, in any way, vulnerable or assailed. The learned Single Judge thought it expedient to refer the entire controversy instead of raising or formulating specific question or points in view of following two decisions which are discussed in the order of reference.

11. Following aspects have emerged from the record unquestionable :

(i) The father of the appellant - original plaintiff was in the December days of his life and after the death of his wife entrusted the management of the property to cousin of the plaintiff Bhikhabhai Lallubhai. He was, therefore, acting after the death of plaintiff's father, as 'de-facto' guardian.

(ii) He alienated the suit land by executing a Sale Deed dated 7.5.1953 in favour of the father of the defendants Parmar Dhula Girdharbhai and Virabhai Nathabhai with consideration of Rs.700/by a registered document.

(iii) The plea of the plaintiff that the suit transaction in respect of the suit land dated 7.5.1953 was a mortgaged transaction or a

conditional sale has not been proved and rightly not believed by the trial Court.

(iv) The transferee of the suit land relinquished the suit land in favour of the co-owner and since then his heirs are in possession and occupation of the suit land.

(v) The entire revenue record produced before the trial Court undoubtedly manifested that the plaintiffs were never in possession since the sale transaction dated 7.5.1953 took place. That the date of birth proved on record of the youngest brother - plaintiff No.4 is dated 1.1.1948. The plea raised by the plaintiffs about the age could not be proved by them and rightly not believed by the trial Court. On the contrary the defendants by leading reliable evidence of school record proved the birth date of the youngest brother. Obviously therefore the original plaintiff No. 4 attained majority in the year 1966.

(vi) that the suit has not been filed within a period of three years after attaining the age of majority by the youngest brother - plaintiff No.4. In fact the suit came to be filed almost after seven years.

12. In so far as the conclusion of the trial Court with regard to bar of limitation in filing the suit is concerned we find that it is quite justified. As per the provisions of Article 60 the period of limitation prescribed in the Limitation Act 1963, is three years from the date from Ward has attained majority. It provides that the Ward who has attained the age of majority has to file Suit to set aside the transfer of property sale by his guardian within a period of three years from the date of majority. The trial Court has, rightly, placed reliance on Article 60 which describes that period of limitation from the date of Ward attaining majority for filing the suit to set aside the transfer of property by his Guardian.

13. In so far as Article 65 matters in the Schedule of Limitation Act prescribes a period of limitation of 12 years for filing a suit for possession of immovable property or any interest therein based on title from the time when the possession of the defendant becomes adverse

to the plaintiff. Considering the situation the trial Court has decided the issue of adverse possession against the plaintiffs and we find that the view taken by the trial Court on this score is quite correct and justified. In the light of the evidence on record the respondents original defendants initially through father and after the death of father they have been in possession since the registered sale transaction which took place on 7.5.1953. Not only that the revenue record produced on record on behalf of the parties, undoubtedly, disclosed that the defendants are in exclusive possession and enjoyment of the suit land. In our opinion therefore the view and the conclusion of the trial Court on this point is quite correct and we affirm it..

14. It may be mentioned, at this stage, that the expression "de facto guardian" is employed in law in contradiction to the expression "de jure guardian". Though both bear within the expression implied relationship to the Ward which is regular and continuous and not casual for one which acts and starts. What the "de facto guardian" act is the authority as compared to the "de jure guardian" to act for the minor, in all other respects there is practically thin and little difference between two connotations. Again the Hindu minority and Guardianship Act, 1956, which came into force from 25.8.1956, would not be attracted to the present case as the transaction in question occurred much prior to the operation of the Act, like that 7.5.1953. The rights and limitation of "de facto guardian" prior to 1956 Act, were virtually almost equal and since it was thought by the Parliament that at times "de facto guardian" may act adverse to the interest of the minors while bringing the Hindu minority and Guardianship Act, 1956, a specific provision has been incorporated in Section 11. So the "de facto guardian", under the provision of Section 11, would not be able to deal with minors property as a person with such a status used to do under uncodified Hindu Law. Since our case is governed by the old provision we should not enter into further details or meticulous examination of this aspect.

15. The learned Single Judge in the reference has observed that in view of the aforesaid two decisions mentioned in the reference it was necessary to refer the entire controversy to the Larger Bench. It is observed in the reference that a decision of Hon'ble Bombay High Court in the case of "Tattya Mohyaji Dhomse v/s. Rabha Dadaji Dhomse, reported in AIR 1953 Bombay 273 is a binding decision to a Single Judge in which the proposition came to be laid down that it is not necessary

for the minor on attaining his majority to file a Suit for declaration that the transaction in question is void and is not binding to him. The decision of the Hon'ble Supreme Court in the State of Punjab v/s. Gurdev Singh, reported in AIR 1992 SC 111, was, also, brought to the notice of the learned Single Judge and therefore he observed that the decision of the Hon'ble Supreme Court and the decision of the Hon'ble Bombay High Court have laid down different proposition and therefore he thought it fit to refer the entire controversy to the Larger Bench.

16. Following observations in the reference order may be highlighted, which, prompted, the learned single Judge to make a reference to the Larger Bench :

> "Certain ticklish questions arise in this appeal. Is is necessary for a minor on attaining his majority to sue for setting aside a transaction with respect to an immovable property by his de facto guardian affecting the former's interest therein ? If it is not necessary, is it necessary for the minor on attaining his majority to file a suit for declaration that the transaction in question is void and is not binding to him ? The Division Bench relying of the High Court in the case of Tattaya Mohyaji Dhomse v. Rabha Dadaji Dhomse reported in AIR 1953 Bombay at page 273 has answered both these questions in favour of the present appellants. One may then feel that these questions no longer retain any ticklish nature therein. However, the ruling of the Supreme Court in the case of State of Punjab v. Gurdev Singh reported in AIR 1992 Supreme Court at page 111 has crated some difficulty in answering these questions in the light of the aforesaid Division Bench ruling of the Bombay High Court in the case of T.M.Dhomse (supra)."

17. The learned single Judge found that the Division Bench decision of the Bombay High Court in case of T.M.Dhomse (supra) is attracted and applicable to the facts of the case on hand. However, he also found that the Supreme Court decision in Gurdev Singh' case (supra) has taken a contrary view than the view taken by the Bombay High Court in T.M.Dhomse (supra).

18. The Supreme Court in State of Madhya Pradesh v. Syed Qamarali, (1967) 1 Service Law Reporter 228, has taken view which is in consonance with the view taken in

T.M.Dhomse's case by the Bombay High Court. The proposition propounded in State of M.P. v. Syed Qumarali (supra) was rendered by a Bench of Five Judges, whereas, the decision of the Supreme Court in Gurdev Singh (supra), though later in point of time, was rendered by a Bench of of Three Judges and, therefore, has to be preferred. The difficulty felt by the learned single Judge was that Syed Qamarali (supra) has been considered by the Supreme Court in Gurdev Singh's case, which is later in point of time and it has also been distinguished.

19. However, in the opinion of the learned single Judge, the Division Bench decision of the Bombay High Court in T.M.Dhomse, was rendered before the bifurcation of the erstwhile State of Bombay and therefore, it is binding to him while sitting as a single Judge. In this connection, relevant observations, which are enumerated in para 8 of the reference order reads as follows:

> "It is obvious that, in accordance with the settled principles of law, a Division Bench ruling of the Bombay High Court prior to bifurcation of the State of Bombay is binding to me sitting as a Single Judge. It would be difficult to hold that it does not lay down correct law in view of the aforesaid ruling of the Supreme Court in the case of Gurdev Singh (supra) when the Constitutional Bench of the Supreme Court in its ruling in the case of Syed Qamarali (supra) has taken the view in consonance with the view taken by the aforesaid Division Bench ruling of the Bombay High Court in the case of T.M.Dhomse (supra). Besides, sitting as a single Judge, I do not think it would be proper for me to hold that a Division Bench ruling of the Bombay High Court prior to formation of the State of Gujarat does not hold the field when it has not come to be overruled specifically."

20. The submission advanced on behalf of the respondents-original plaintiffs is that the reference order is shrouded and clouded by confusion. It is further submitted that T.M.Dhomse's case was, impliedly, overruled in view of the clear exposition and evident proposition laid down by the Supreme Court in Gurdev Singh's case, and therefore, there was no question of making a reference to the Larger Bench when the subsequent decision of the Supreme Court has taken a contrary view. It was, also, contended that when the

proposition and principle enunciated by the Supreme Court is contrary to the Division Bench decision, it is not necessary that earlier binding decision should be, specifically, overruled. It was, therefore, also submitted that the approach of the learned Single Judge is, patently, erroneous and reference order, whereby, larger Bench is required to be constituted is unwarranted.

21. At this stage, we may reiterate what we have said in the prefatory para in this judgment and add that the First Appeal, on hand, is of 1977 and the controversy involved between the parties is of 1973 arising out of a transaction, which, was of 1953 and the learned single Judge, who is the author of the reference order has retired long before. More so, when the learned single Judge has recorded reference order in a way that the whole appeal is referred to us as Larger Bench without formulating any specific issue or any precise point or question of law, and again, without being oblivious to serious and stark reality of astronomical arrears of cases leading to docket explosion and also the condition and the position of the parties, who are, agriculturists residing in villages and considering the same, not to put them any further procedural strain and stress, who have been passing through the long legal conduit procedural pipes since last 27 long years, we thought it expedient to deal and decide the entire appeal, as voiced in the reference order in the larger interest of justice.

22. We are of the clear opinion that when the binding decision or authority of the High Court stands even impliedly overruled, either by a decision of Larger Bench or Hon'ble Apex Court no reference is necessary to a Larger Bench as it is done, in the present case. This proposition of law has been, extensively, explored and very well expounded and settled in the field of Precedential Jurisprudence. But for the aforesaid special reasons and special circumstances coupled with the fact that the author of the reference has retired long before, we would have not thought it necessary or expedient to deal with and decide to whole appeal on merits making a departure from the usual and regular practice.

23. It becomes, therefore, very clear that the decision of the Supreme Court in Gurdev Singh (supra) in which Syed Qamarli's case (supra) has been considered and distinguished, is, squarely, attracted to the facts of the present case and the merits of the appeal could be decided on that basis itself. In para 10 of the decision

in Gurdev Singh (supra), Qamarali's case (supra) has been, specifically, referred to, and distinguished by giving facts and law elaborately. It has, also, been, clearly, observed that the right to sue accrued to Syed Qamarali was brought within the period of limitation. Qamarali's case stands on the different footing and is not relevant.

24. In the present appeal, the issue of limitation is decided against the appellants. It has been, clearly, found by the Trial Court that the suit was not brought within the period of limitation. It has been, clearly, propounded in para 8 in Gurdev Singh's case that in view of the legal principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must, approach the Court within the period of limitation. If the statutory time limit expired, the Court cannot give a declaration sought for.

25. The observations in para 6 & 7 are also very relevant and material:

"6. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In Smith v. East Elloe Rural District Council, 1956 AC 736, at p.769 Lord Radcliffe observed:

"An order even if not made in good faith is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

7. Apropos to this principle, Prof. Wade states: "the principle must be equally true even where the 'brand' of invalidity is plainly visible; for their also the order can effectively be resisted in law only by obtaining the decision of the Court (See : Administrative Law 6th Ed. p. 352) Prof. Wade sums up these principles:

"The truth of the matter is that the Court will invalidate an order only if the right ready is sought by the right person in the right

> proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another."

26. It would be, also, very material and interesting to note that in Madhukar Vishwanath v. Madhao, (1999) 9 SCC 446, a Bench of three Judge in a recent judgment (dated August 10, 1999), has held that even in a case of alienation by de-facto guardian after the introduction of Hindu Minority and Guardianship Act, 1956, and special reference to section 11, period of limitation for filing the suit as provided in Article 60 would apply. In that case, the suit proceeded upon the basis that there was no legal necessity for 'de-facto guardian' to have alienated the property of the minor. The plaint, should, therefore, properly plead for a declaration that the alienation was bad in law, possession was, only, the consequential relief. Even if suit was entertained as pleaded, no decree for possession could have been passed without first finding that the alienation was not for legal necessity and was, therefore, bad in law. To such a suit the provisions of Article 60 apply which relate to suit to set aside the transfer of properties made by the Guardian of a ward by the ward who has attained majority and the period prescribed is three years commencing on the date on which the ward attains majority. In that case also, the suit was instituted beyond the period of limitation of three years though the impugned alienation by the guardian was found to be not for legal necessity and, therefore, was bad, legal remedy is required to be taken within the period of limitation. This decision, fully supports the decision of Gurdev Singh (supra).

27. In the present case, the transaction took place on 7th May 1953 in favour of the father of the respondents and one Virabhai Nathabhai for consideration and, later on, said Virabhai Nathabhai relinquished his right thereunder in favour of the father of the present respondent, whereas, the Hindu Minority and Guardianship Act, 1956 was not brought in force. What was the proposition then would be the rights and liabilities of de facto guardian before the aforesaid Act came into force ? Under the Old Hindu law, a de-facto guardian

enjoyed the same powers as a natural guardian. Alienation by a natural or de-facto guardian should be supported by necessity or benefit. Alienation by a natural guardian not supported by benefit or necessity is only voidable and is valid unless set aside. Such an alienation by a de facto guardian is void and the minor on attaining majority can ignore it or ratify it and need not be set aside. However, for filing a suit for declaration, possession of mesne profit, the period of limitation is prescribed. For possession from an alienee, the period of limitation is 12 years. The suit has been filed, admittedly, after period of limitation. As per the aforesaid two decisions of the Supreme Court, that in a case of illegal, wrongful or ultra vires transaction or order, a suit for declaration will not be governed by law of limitation would run afoul of Limitation Act. Statute of limitation has been intended to provide time limit for a suit conceivable.

28. In so far as the rights of the de-facto guardians are concerned, it may be noted that a person who is not an ad hoc guardian and does not pose as a guardian for particular purpose, but manages the affairs of the infant in the same way as a de jure guardian does could be described as a de facto guardian although he is not a natural guardian or a guardian appointed by the court. A de facto guardian has the same power of alienating the property of his ward as a natural guardian before codification of Law. A bona fide mortgage executed by the de facto guardian of a Hindu minor for the benefit of his estate and with due regard to his interests cannot be impeached on the sole ground that he is merely a de facto guardian, for example, if it is effected for the marriage of the minor's sister.

29. The concept and philosophy of de-facto guardian is unique and novel in Hindu Law. A de-facto guardian means, at times, a self-appointed guardian. He is a person who takes continuous interest in the welfare of the minor person or in the management and administration of his property without any authority of law. The term 'de facto guardian' as such is not mentioned in any of the tests, but his existence has never been denied in Hindu Law. Hindu jurisprudence has all along recognised the principle that if liability is incurred by one on behalf of another in a case where it is justified, then the person, on whose behalf the liability is incurred, or at least, his property is liable notwithstanding the fact that no authorisation was made for incurring the liability.

30. The de-facto guardian has been conceptualised and also institutionalised in Hindu law. It was recognised as early as 1856. The Privy Council had dealt with this aspect in many cases under the Hindu Law and the right of a bona fide incumbrancer, who has taken from a de-facto guardian a charge of land, created honestly, for the purpose of saving the estate or for the benefit of the title. By passage of time, the power of alienation came into existence in Hindu Law. Before the Hindu Minority and Guardianship Act, 1956, came into force, the position of the natural guardian and de-facto guardian was virtually identical, except in certain respects. After the 1956 Act, it has been clearly provided in section 11 that de-facto guardian shall not be entitled to dispose of or deal with the property of a Hindu minor merely on the ground of his or her being the de-facto guardian of the minor.

31. In Bailochan Karan v. Basant Kumari Naik & anr. (1999) 1 LRI 337, decided on 2nd February, 1999, it has been, clearly, held by the Hon'ble Apex Court that a combined effect of sections 6 and 8 of the Limitation Act read with third column of the appropriate article would be that a person under disability may sue after cessation of disability within the same period as would otherwise be allowed from the time specified there for. Therefore, the maximum period of limitation available to the appellant was, only, three years from the date of his attaining majority. Consequently, the right to file a suit of the appellant expired at the end of three years from the date of his attaining majority. The plaintiffs, therefore, had perfected their title by virtue of section 27 of the Limitation Act.

32. In that case, the plaintiff ('the respondent') purchased and came into possession of a piece of land in 1953. In 1971, the plaintiff filed a suit against the defendant ('the appellant') alleging that he had forcibly trespassed in the land. The appellant claimed he was the legitimate grandson of the original owner of the property, thus the sale in favour of the plaintiff was void. The plaintiff's suit was dismissed. On second appeal, the High Court remanded the matter for ascertaining the date on which the appellant attained majority. The trial court held that since the suit had been filed by the plaintiff before the expiration of 12 years from the date the appellant attained majority, the plaintiff had not perfected title by adverse possession. The High Court reversed the trial court and held that if the appellant was born in 1945, he attained majority in 1966 on completion of 21 years and he could have

instituted a suit for recovery of possession within three years therefrom, i.e. 1969. Therefore, the suit by the plaintiff filed in 1971 was beyond the period of three years. Consequently, the High Court held that the appellant could not have filed any suit for recovery of possession and the plaintiffs had perfected title to the property by virtue of section 27 of the Limitation Act, 1963.

33. Upon a dispassionate and close examination of the relevant decisions, proposition which has emerged and which has been explained and expanded is that the period of limitation prescribed in Article 60 assumes wider significance in a case when the minor on attaining the majority files a suit for possession on the premise that the de-facto guardian had alienated his property without authority and that there was no legal necessity for the de-facto guardian to alienate the property. The Suit for setting aside such a transaction is required to be filed within a period of three years from the date of attaining majority. Even if the Suit is filed on the basis of title without seeking the relief of quashing the impugned transaction made by the de-facto guardian it is necessary to consider the issue of limitation as to at what point of time the legal disability was concluded for filing the Suit.

34. Section 6 of the Limitation Act, specifically, provides the right of a minor to initiate legal action on completion of three years after the legal disability on account of the minority would cease. The combined reading of Section 6 and 8 and Article 60, the Suit, in fact situation like case on hand, is required to be filed within a period of three years from the date of attaining the majority. Section 6 of the Limitation Act provides a person entitled to sue at the time from which the prescribed period is to be reckoned a minor institute the Suit within the same period after the disability has ceased as would, otherwise, has been allowed from the time specified therefor in the third column of the Schedule.

35. Section 8 is proviso to Section 6 or Section 7. A conjoint reading of Section 6 & 8 read with third column of the appropriate Article would be that the person under disability may sue after fixation of the disability within the same period as would otherwise be allowed from time specified or in the third column of the schedule. It may be emphasised that such an extended period in no case go beyond the period of three years from the date of cessation of the disability. It,

therefore, clearly emerges that the right to institute a suit of the party shall get expired at the end of three years from the date of his attaining majority.

36. At this stage, the reference to Section 27 of the Limitation Act may be expedient which provides that the title is perfected when the party has not availed of the benefit of the provision of Section 6 and has allowed to lapse the period more than three years. It, therefore becomes clear that Section 27 provides extinguishment of right to property at the determination of the period hereby limited to any person for instituting a Suit for a possession of any property, the right of such person shall be extinguished.

37. It is, therefore, very clear that a Ward on his attaining the age of majority like that on cessation of the disability, fails to pursue the legal remedy or to initiate a legal battle by filing a Suit, he would not be entitled to file Suit and therefore the person in possession of the property would get his possession or title as the case may be perfected upon the extinguishment of the right to file a Suit in relation to a property.

38. It has also been clearly propounded in the aforesaid pronouncement of the Hon'ble Apex Court that even in the case of transaction of a guardian is held to be or found to be or spelt out to be void and in case if the ward desires of challenging it by way of declaration or by any other mode claiming possession has to initiate the legal coercive action within the same period as prescribed in Section 6 read with Article 60 of the Limitation Act.

39. After having taken into consideration the documentary evidence, testimonial collection and the relevant proposition of law and the aforesaid case-law, we are left with no alternative but to dismiss the Appeal by holding -

(i) that the Suit filed by the original plaintiff is barred by limitation as the suit came to be instituted not within the period of three years from the date of attaining the majority by the last Ward - plaintiff No.4, in view of the provision of Section 6 read with Section 8 and Article 60.

(ii) It is rightly found by the trial Court and we affirm it that the respondents - original

defendants are the owners and the occupiers of the suit land and obviously upon the extinguishment of the right, if any, of the plaintiffs in view of Section 27 of the Limitation Act, the title of the original defendants has been perfected.

(iii) Alternatively, also, it is, successfully, noticed that the original defendants have become owners by adverse possession as they have been in actual physical possession and real possession of the suit land since the registered Sale transaction which took place as early as on 7.5.1953.

(iv) The findings of the learned trial Judge that the plea of plaintiffs that they had granted the suit land to one Gordhandas in 1966 and has redeemed the same and got back the possession within one year is rightly held against the plaintiffs and we also confirm it.

(v) that the plaintiffs have failed to establish that document dated 7.5.1953 executed by Bhikhabhai Lallubhai was without authority and not binding to the plaintiff. In fact the transaction which occurred was much prior to the date of operation of the Hindu Minority and Guardianship Act, 1956. The view and the conclusion recorded on this point by the trial Court is, also, confirmed.

(vi) that the plaintiffs are not entitled to any relief and, therefore, the only fate they should embrace is the dismissal of the Appeal, which we hereby do without any order of costs.

(J. N. Bhatt, J.)

(S. K. Keshote, J.)

(D.C.Srivastava, J.)

July 28, 2000.